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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON PAUL JONES,

Defendant and Appellant.

F056326

(Super. Ct. No. 1242071)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Thomas D. Zeff, Judge.

Rex A. Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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*Before Vartabedian, Acting P.J., Gomes, J., and Dawson, J.

PROCEEDINGS

On August 25, 2008, appellant, Jason Paul Jones, was charged in a first amended information with two counts of possession of stolen property (Pen. Code, § 496, subd. (a)).¹ The information alleged a prior prison term enhancement (§ 667.5, subd. (b)). After a jury trial, appellant was convicted on August 28, 2008, of both counts. In a bifurcated proceeding, the trial court found the enhancement to be true.

On August 29, 2008, appellant entered into a plea agreement in superior court case No. 1221063, a case in which he admitted one count of felony possession of a weapon (§ 12020, subd. (a)). Under the plea agreement, appellant would receive an eight-month consecutive sentence if he admitted the possession of a weapon allegation.² Appellant was released from custody pending sentencing with the understanding that if he appeared on time for sentencing in this action, he would receive the midterm of two years on count one and a consecutive term of eight months on count two. If appellant failed to surrender on time, he would receive a sentence of three years on count one in the instant action.³ Appellant waived his right to any appeal in both cases.

The court sentenced appellant on September 11, 2008, to a prison term of three years on count one. The court sentenced appellant to consecutive sentences of eight months on count two plus eight months in superior court case No. 1221063, and one year

¹ Unless otherwise noted, all statutory references are to the Penal Code.

² Appellant's appeal from the judgment in superior court case No. 1221063 is currently before this court in our case No. F056323. On February 26, 2009, we denied appellant's motion to consolidate case No. F056323 with this action. Instead, we directed the Clerk/Court Administrator of our court to coordinate the two appeals so they could be considered simultaneously with the same panel.

³ Appellant was supposed to surrender for sentencing on September 5, 2008. On September 5, 2008, appellant failed to appear for sentencing. On September 9, 2008, appellant admitted violating the terms of his release on his own recognizance, acknowledging he would receive an upper term sentence on count one.

for the prior prison term enhancement. Appellant filed a timely notice of appeal. Appellant's total prison term is five years four months.

Appellant's appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, raises no issues, and requests this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on March 20, 2009, we invited appellant to submit additional briefing. To date, he has not done so.

FACTS

On February 26, 2008, Oscar Chavez returned home from work between 9:00 and 9:30 p.m. When he opened his garage door, Chavez noticed several items were missing. Chavez's garage is attached to his residence. Chavez stated he was missing two bicycles, jewelry, and a laptop computer. Inside the home, everything was completely turned upside down. The alarm box was yanked out of the wall. Chavez told Modesto Police Officer Frank Ignacio that he suspected two neighbors, who lived across the street, had burglarized his home because they were acting suspiciously and riding bicycles that night. The neighbors across the street were Daniel and Christopher Hensen.

Ignacio notified others to be on the lookout for two racing style bicycles. A few minutes later, Ignacio learned there were two bicycles leaning against a fence on Benson Avenue. After advising appellant of his *Miranda*⁴ rights, Ignacio questioned appellant, who was in possession of the bicycles. Appellant said his friend, Daniel Hensen, was burglarizing homes in the neighborhood that day. Hensen brought the bicycles to appellant's home, explaining he had stolen them from a neighbor. No one had permission to take the bicycles from Chavez, who explained they were worth \$7,000.

⁴ *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

Fredman Schmitz knew appellant since he was a baby.⁵ Appellant came to Schmitz's home in February 2008. Appellant ate a meal and left. After appellant was gone, Schmitz noticed his fiancée's spare house key was missing.

At some point, appellant was working on his bicycle as Schmitz had a telephone conversation with his brother about an upcoming trip to Pomona. Appellant could hear the conversation. Prior to leaving for Pomona, Schmitz locked his doors and windows. When he returned on February 26, 2008, everything he owned was in plastic bags neatly packed on top of his furniture. Food was missing from the refrigerator. There was no sign of forced entry. Speakers to the television set were no longer hooked up.

Clothes belonging to Schmitz's fiancée were neatly folded up, "ready to go." His daughter's clothes had been removed from drawers and were all inside a pillowcase. Other belongings were placed in plastic garbage bags. Schmitz discovered he was missing between 50 and 100 DVD's, a Rolex watch, a silver bracelet, a silver chain that matched the bracelet, and a very expensive tattoo gun.

Schmitz contacted the police. He believed appellant was responsible for the theft of his property because no one broke into his home, all of his doors and windows were locked, a spare key was missing, and Schmitz's front door was unlocked. Schmitz found appellant after talking to appellant's brother. Appellant told Schmitz he knew who had the Rolex watch and could get it back.⁶

Schmitz contacted Officer Drewry to arrange an encounter with appellant. To get appellant into his pickup truck, Schmitz said he had a gun. Appellant got into Schmitz's truck. Schmitz drove appellant to Drewry, who was stopped in the middle of Benson Street. Schmitz went into a bedroom at 714 Benson and saw his DVD movies and his

⁵ Schmitz had felony convictions for assault and forgery.

⁶ After appellant was arrested, his brother gave a watch back to Schmitz. The jewels to the watch were missing. The watch that was returned was apparently a Rolex knock-off.

kids' cartoons. Schmitz's name was on his DVD's. Although Schmitz recovered most of the DVD's, about 20 were missing.

Drewry testified that after Schmitz brought appellant to him near the 400 block of Benson, appellant used his brother's name. When asked about the Rolex watch, appellant said someone had given it to him. Appellant gave it to a guy who was going to return it. Drewry told appellant eyewitnesses had seen him at the scene of the burglary with a bag over his shoulder.

Appellant denied breaking into any house. Appellant told Drewry he slept at 714 Benson. Drewry searched appellant's room and found two expensive bicycles.⁷

Appellant's brother testified he never gave Schmitz a watch and found Schmitz to be untruthful. Appellant's other brother testified that Schmitz and his entire family are habitual liars.

Appellant testified he had a confrontation with Schmitz concerning a dispute between Schmitz and appellant's father in mid-February. Appellant saw Schmitz about three days later. The two sat down and had breakfast together. Appellant asked Schmitz if he needed anything. Appellant considered himself close to Schmitz. Until February 26, 2008, the last time Schmitz saw appellant and his girlfriend was during the breakfast.

On February 26, 2008, appellant was at home with his little brother. Schmitz arrived and said someone had robbed his home. Schmitz accused appellant's cousin of the crime. Schmitz said a Rolex watch was taken. Appellant never admitted to having someone else's watch. Appellant was wearing his own fake Rolex.

According to appellant, Schmitz told him appellant's cousin was trying to sell a Rolex and Schmitz was willing to pay appellant and his brother \$500 to take Schmitz to appellant's cousin. Appellant told Schmitz he would tell him where to find his cousin.

⁷ Drewry contacted other investigators and moved the bicycles onto the street. The bicycles were later identified by Chavez as his missing bicycles.

Later that evening, while appellant was walking to an address on Benson, Schmitz pulled up and said he had a gun. Schmitz wanted appellant to show him if two people were appellant's cousins. After a 30-minute drive, Schmitz drove appellant up to Drewry. Drewry read appellant his *Miranda* rights. Appellant told Drewry he saw someone named James breaking into Schmitz's home through the back door. Several other people, including Schmitz's father, were busting the doorknob off the door. Out of fear of retaliation, appellant did not tell Schmitz what he had seen.

Appellant denied putting any DVD's into his bedroom and did not know they were there. He had not touched or seen them before. Appellant did not know two bicycles were in his room. The first time he saw them was when they were leaning against the fence outside the residence. Appellant denied that the residence in which the missing property was found was his residence.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.